

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STANDARD INSURANCE COMPANY,

Plaintiff,

v.

CAROL NELSON, *et al.*,

Defendants.

CASE NO. C07-0140 RSM

ORDER GRANTING DEFENDANT  
SIMPSON'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
AND DENYING DEFENDANT  
NELSON'S CROSS-MOTION FOR  
PARTIAL SUMMARY JUDGMENT

**I. INTRODUCTION**

This matter comes before the Court on defendant Victoria Simpson's Motion for Partial Summary Judgment and defendant Carol Nelson's Cross-Motion for Partial Summary Judgment. (Dkts. #35 and #39). Defendant Victoria Simpson ("Simpson") argues that she is the entitled beneficiary of a life insurance policy because the insured changed beneficiaries from defendant Carol Nelson ("Nelson") to defendant Simpson by complying with the amended requirements set forth by the insurer. Alternatively, defendant Simpson argues that she should be declared the beneficiary of the life insurance policy under the doctrine of substantial compliance. Defendant Carol Nelson ("Nelson") responds that the insured did not strictly or substantially comply with the requirements for changing beneficiaries under the policy. Therefore defendant Nelson argues that she is the rightful beneficiary to the proceeds

1 of the life insurance policy.

2 For the reasons set forth below, the Court agrees with defendant Simpson, and  
3 GRANTS defendant Simpson's Motion for Partial Summary Judgment.

## 4 **II. DISCUSSION**

### 5 **A. Background Facts**

6 On August 28, 2002, Kenneth K. Watanabe ("Watanabe") began employment with the  
7 City of Seattle ("the City"). Pursuant to his employment, Watanabe became a member of  
8 Group Life Insurance Policy No. 608217-D ("the Policy") issued by plaintiff Standard  
9 Insurance Company ("Standard") and owned by the City. Watanabe possessed both Basic and  
10 Supplemental plans under the Policy. When Watanabe commenced employment with the City  
11 of Seattle, he was involved in a non-marital relationship with defendant Nelson in which the  
12 two cohabitated. (Dkt. #39 at 2-3). Watanabe further designated defendant Nelson as the  
13 beneficiary under the Policy that became effective in January of 2003. (Dkt. #41, Declaration  
14 of Dubs A. T. Herschlip, Exhibit 1). However, Watanabe's relationship with defendant  
15 Nelson deteriorated and on August 1, 2004, Watanabe formed a domestic partnership with  
16 defendant Simpson. (Dkt. #35, Exhibit A).

17 Watanabe then attempted to change the beneficiary from defendant Nelson to  
18 defendant Simpson under his Policy by making an electronic change on the City's benefits  
19 page online. However, Watanabe was one of several employees who mistakenly attempted to  
20 change their beneficiaries by clicking the "Edit" button, rather than the 'Add  
21 Dependent/Beneficiary" button to effectuate the change. (Dkt. #35, Exhibit C, Part 1 at 2).  
22 Consequently, Michele Thurman ("Thurman"), the City's Senior Personnel Analyst in charge  
23 of overseeing the City's benefits programs, contacted Watanabe via telephone in November of  
24 2004. Thurman indicated to Watanabe that he would not be able to correct his online  
25 information electronically because the period for open enrollment online had closed. *Id.* at 2.  
26 Watanabe therefore informed Thurman of his intent to change beneficiaries. Thurman  
27 testified, "Mr. Watanabe informed me that he wanted Victoria Simpson to be his beneficiary at  
28 100 percent[.]" and that she "made the change while he was on the phone with me." *Id.* at 4.

1 Thurman subsequently made two separate entries - one for his Basic plan and another for his  
2 Supplemental plan - that designated defendant Simpson as the beneficiary under Watanabe's  
3 Policy. *Id.* at 5. Watanabe could thereafter enter his online personal benefits page to see that  
4 defendant Simpson was the new beneficiary under his Policy. Thurman testified:

5 Q: So you're telling me - let's just say - throw out a date, November 2004. If Mr.  
6 Watanabe went online into the module, would he have seen any information  
indicating Victoria Simpson as a beneficiary?

7 A: *If he went in there on I would say November 24<sup>th</sup>, when we uploaded the*  
8 *information, he would have seen Victoria Simpson as the beneficiary.*

9 Q: So on November 24<sup>th</sup>, 2004, sometime thereabout, the City of Seattle -

10 A: Yes.

11 Q: - uploaded this new beneficiary information?

12 A: Yes.

13 (Dkt. #41, Exhibit 4 at 10) (emphasis added).

14 Despite the entries made by Thurman and her belief that Watanabe intended to change  
15 beneficiaries, Thurman also testified that she "told [Watanabe] that he needed to back up the  
16 change with a paper enrollment form that had his signature on it." *Id.* at 12. Thurman further  
17 indicates that Watanabe understood her instructions. *Id.* Additionally, when asked if her  
18 entry constituted an electronic designation of a beneficiary under the Policy, Thurman  
19 responded that she "would have asked him for the written follow-up to the electronic  
20 designation." *Id.* at 17. Nevertheless, Thurman stated that the beneficiary change was  
complete. Thurman testified:

21 Q: So in your mind, without this paper form being completed, that the beneficiary  
22 change wasn't actually effected.

23 A: In my mind, yes, it was.

24 Q: It was effected or it was not?

25 A: It was -

26 Q: It was effected.

27 A: - because he stated to me his intent.

28 *Id.*

1 Approximately one year after Watanabe made the online change, he met with Donna  
2 Russo (“Russo”), a personnel specialist with the City, to discuss an upcoming leave that he  
3 intended to take due to serious medical reasons. Russo indicated that at this meeting, she  
4 printed documents for Watanabe relating to his Policy. Russo testified:

5 A: I printed [documents] so he would know who was listed as his current  
6 beneficiary.

7 Q: Do you recall who that was that was listed as his current beneficiary?

8 A: For the Standard Insurance?

9 Q: Correct.

10 A: Victoria Simpson.

11 Q: So you showed him a printout for the purposes of showing him who his  
12 beneficiary of that particular life insurance policy was, and it was Victoria  
13 Simpson named on that printout.

14 A: Uh-huh.

15 Q: Did he understand that?

16 A: Yes.

(Dkt. #35, Exhibit D at 4-5).

17 Meanwhile, in the fall of 2006, plaintiff Standard issued “Group Policy Amendment  
18 No. 9,” an amendment regarding the means by which an insured could change a beneficiary.  
19 The amendment, provides in pertinent part:

20 Effective October 1, 2004, [Group Policy 608217-D] is amended to read as follows:

21 \* \* \*

22 You may name or change Beneficiaries at any time without the consent of the  
23 Beneficiary. You must name or change the Beneficiary in writing. *Writing includes a  
form signed by you or a verification from the Policyholder or Employer of an  
electronic or telephonic designation made by you.*

24 (Dkt. #35, Exhibit B) (emphasis added).

25 The purpose of Group Policy Amendment No. 9 was to create a system where the  
26 City’s employees could enroll in policies or make changes to their policies online. (Dkt. #45,  
27 Declaration of Thurman at ¶ 3). This was consistent with the City’s intention to devise a  
28 system of employee self-service. *Id.* Ultimately, the amendment was issued “to allow

1 electronic designations to be made by City employees.” *Id.* at ¶ 4. Group Policy Amendment  
2 No. 9 retroactively applied to October 1, 2004, which corresponded with when the City first  
3 offered its online services. *Id.*

4 Watanabe passed away on January 11, 2006. At the time of his death, Watanabe was  
5 insured in the sum of \$197,500 under the Policy. In March of 2006, defendant Simpson filed  
6 a benefits claim with plaintiff Standard, identifying herself as the entitled beneficiary to the  
7 proceeds of the Policy. Shortly thereafter, defendant Nelson also contacted plaintiff Standard,  
8 claiming that she was entitled to 50% of the benefits payable under the Policy. Defendant  
9 Nelson subsequently amended her demand and now claims that she is entitled to the entire  
10 proceeds of the Policy. As a result, plaintiff Standard brought the instant diversity action in  
11 this Court by filing a Complaint in Interpleader pursuant to Fed. R. Civ. P. 22. After filing its  
12 complaint, plaintiff Standard moved for judgment in interpleader. The Court granted this  
13 unopposed motion on April 26, 2007. (Dkt. #17). The Court specifically discharged plaintiff  
14 Standard of any further liability beyond the \$197,500 it deposited with the Court, and enjoined  
15 defendants from prosecuting any other claims against plaintiff Standard relating to the benefits  
16 under the Policy. *Id.*

17 Defendants Simpson and Nelson now bring their respective Motions for Partial  
18 Summary Judgment regarding their rights under the Policy.<sup>1</sup>

### 19 **B. Summary Judgment Standard**

20 Summary judgment is proper where “the pleadings, depositions, answers to  
21 interrogatories, and admissions on file, together with the affidavits, if any, show that there is  
22 no genuine issue as to any material fact and that the moving party is entitled to judgment as a  
23 matter of law.” Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247  
24 (1986). The Court must draw all reasonable inferences in favor of the non-moving party.  
25 *See F.D.I.C. v. O’Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992), *rev’d on other*

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26  
27 <sup>1</sup> Defendant Simpson also filed a third-party complaint against third-party defendant City  
28 of Seattle. Defendants’ partial summary judgment motions to resolve their respective claims do  
not impact defendant Simpson’s third-party complaint.

1 *grounds*, 512 U.S. 79 (1994). The moving party has the burden of demonstrating the absence  
2 of a genuine issue of material fact for trial. *See Anderson*, 477 U.S. at 257. Mere  
3 disagreement, or the bald assertion that a genuine issue of material fact exists, no longer  
4 precludes the use of summary judgment. *See California Architectural Bldg. Prods., Inc., v.*  
5 *Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987).

6 Genuine factual issues are those for which the evidence is such that “a reasonable jury  
7 could return a verdict for the non-moving party.” *Anderson*, 477 U.S. at 248. Material facts  
8 are those which might affect the outcome of the suit under governing law. *Id.* In ruling on  
9 summary judgment, a court does not weigh evidence to determine the truth of the matter, but  
10 “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d  
11 547, 549 (9th Cir. 1994) (citing *O’Melveny & Meyers*, 969 F.2d at 747). Furthermore,  
12 conclusory or speculative testimony is insufficient to raise a genuine issue of fact to defeat  
13 summary judgment. *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 60 F. 3d 337,  
14 345 (9th Cir. 1995).

### 15 **C. Applicable Law**

16 The instant case is before the Court based on diversity of the parties. Accordingly, the  
17 issues presented are governed by Washington State law. *See Klaxon Co. v. Stentor Electric*  
18 *Mfg. Co.*, 313 U.S. 487, 496 (1941); *Insurance Co. N. Am. v. Federal Express Corp.*, 189  
19 F.3d 914, 919 (9th Cir. 1999) (explaining that in an ordinary diversity case, federal courts  
20 apply the substantive law of the forum in which the court is located). Neither party disputes  
21 that Washington State law is applicable in this case.

### 22 **D. Interpretation of Group Policy Amendment No. 9**

23 It is well-established that interpretation of insurance policies is a question of law.  
24 *Kitsap County v. Allstate Ins. Co.*, 136 Wash.2d 567, 575, 964 P.2d 1173 (1998). An  
25 insurance policy is a contract, and courts shall determine the contracting parties’ intent by  
26 resorting to a fair, reasonable, and sensible construction of the contract’s language, as the  
27 average purchaser would understand. *See Sharbono v. Universal Underwriters Ins. Co.*, 139  
28 Wash. App. 383, 394, 161 P.3d 406 (2007) (citing *Am. Nat’l Fire Ins. Co. v. B&L Trucking*

1 & *Constr. Co. Inc.*, 134 Wash. 2d 413, 427, 951 P.2d 250 (1998). Furthermore, courts will  
2 enforce an insurance contract as written if the contract is clear and unambiguous. *See Allstate*  
3 *Ins. Co. v. Peasley*, 131 Wash.2d 420, 424, 932 P.2d 1244 (1997) (citations omitted); *see*  
4 *also Sharbono*, 139 Wash. App. at 394 (“If an insurance contract’s language is neither  
5 ambiguous nor difficult to comprehend, we will enforce the intent expressed in the policy[.]”).  
6 An ambiguity exists only “if the language used in an insurance policy is fairly susceptible to  
7 two different reasonable interpretations.” *American Star Ins. Co. v. Grice*, 121 Wash. 2d  
8 869, 874, 854 P.2d 622 (1993).

9 In the instant case, the controlling insurance policy is Group Policy Amendment No. 9.  
10 As referenced above, this amendment requires that in order for an insured to change a  
11 beneficiary, a writing is required. A writing is further defined as either: (1) a form signed by  
12 the insured, or (2) a verification from the Policyholder or Employer of an electronic or  
13 telephonic designation made by the insured. Therefore the dispositive issue before the Court  
14 is whether Watanabe complied with the requirements for changing beneficiaries set forth by  
15 the clear and unequivocal language of Group Policy Amendment No. 9. It is overwhelming  
16 evident that he did. Here, there is no dispute that Watanabe edited his Policy online to change  
17 beneficiaries from defendant Nelson to defendant Simpson. Indeed, defendant Nelson  
18 acknowledges that “[i]t is uncontroverted that [Thurman] designated [defendant Simpson]  
19 online as the beneficiary in accord with her belief as to the insured’s intent[.]” (Dkt. #39 at 7).  
20 Therefore Watanabe made the requisite electronic designation of his change of beneficiary as  
21 required by Group Policy Amendment No. 9.

22 The City, as Watanabe’s employer, also verified this designation when Thurman  
23 telephoned Watanabe and Watanabe specifically informed Thurman of his intent to have  
24 defendant Simpson be his beneficiary under the Policy. Thurman complied and made the  
25 requested change by making the appropriate entries online. In addition, this verification is  
26 supported by the fact that by November 24, 2004, if Watanabe entered his online benefits  
27 page, he would have seen that defendant Simpson was the beneficiary under his Policy. The  
28 City further verified this designation when Watanabe met with personnel specialist Russo in

1 the fall of 2005, and Russo provided Watanabe with documents affirming the change of  
2 beneficiaries from defendant Nelson to defendant Simpson.

3 Notwithstanding the City's verification, defendant Nelson argues that a paper copy  
4 signed by Watanabe effectuating this change was required. However, this argument is  
5 inconsistent with the intention of the parties to this insurance policy. Plaintiff Standard and  
6 the City are the parties to this insurance contract and the purpose of Group Policy  
7 Amendment No. 9 was to allow City employees to make changes to their policies  
8 electronically without having to submit a signed paper copy as defendant Nelson suggests.  
9 This purpose is evidenced by both the plain language of the amendment, and the declaration of  
10 Thurman referenced above. Thurman's declaration traces the rationale behind allowing for  
11 electronic designations which was consistent with the City's desire to allow employees to self-  
12 serve their policies online. Thus, the Court finds no merit in defendant Nelson's arguments.

13 Given that Courts must interpret insurance policies by resorting to a fair, reasonable,  
14 and sensible construction of the policy's language, this Court finds that Watanabe complied  
15 with the requirements of Group Policy Amendment No. 9. Specifically, this Court finds that:  
16 (1) Watanabe made an electronic designation changing the beneficiary under his Policy from  
17 defendant Nelson to defendant Simpson; and that (2) the City verified this change.

#### 18 **E. Substantial Compliance**

19 Because the Court has found in favor of defendant Simpson based on the clear and  
20 unequivocal language of Group Policy Amendment No. 9, the Court finds it unnecessary to  
21 discuss the parties' respective arguments regarding the doctrine of substantial compliance  
22 under Washington law.

### 23 **III. CONCLUSION**

24 Having reviewed defendant Simpson's motion for partial summary judgment (Dkt.  
25 #35), defendant Nelson's cross-motion for partial summary judgment (Dkt. #39), the parties'  
26 respective responses and replies, the declarations and exhibits attached thereto, and the  
27 remainder of the record, the Court hereby finds and ORDERS:

28 (1) Defendant Victoria Simpson's Motion for Partial Summary Judgment (Dkt. #35)



1 is GRANTED.

2 (2) Defendant Carol Nelson's Cross-Motion for Partial Summary Judgment (Dkt.  
3 #39) is DENIED.

4 (3) The Clerk is authorized and directed to draw a check from the remaining funds  
5 deposited by Plaintiff Standard Insurance Company in the registry of this Court, and pay such  
6 funds to defendant Victoria Simpson's counsel at the following address:

7 Reed Law Firm PLLC  
8 c/o Rebecca Reed  
9 601 107<sup>th</sup> Avenue NE, 19<sup>th</sup> Floor  
10 Bellevue, WA 98004

11 (4) This Order does not close the case as defendant Victoria Simpson's third-party  
12 complaint against third-party defendant City of Seattle remains pending before the Court.

13 (5) The Clerk is directed to forward a copy of this Order to all counsel of record.

14 DATED this 7<sup>th</sup> day of November, 2007.

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16 RICARDO S. MARTINEZ  
17 UNITED STATES DISTRICT JUDGE  
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